

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 28,370

In re: 4009 3rd Street, S.E., Unit B1

Ward Eight (8)

WINN MANAGEMENT/ATLANTIC GARDENS APTS.
Housing Provider/Appellant

v.

DEBRA BURTON
Tenant/Appellee

**ORDER ON MOTION FOR ENLARGEMENT TO FILE
BRIEF OUT OF TIME**

January 18, 2008

YOUNG, CHAIRPERSON. The decision and order involved in this appeal, Burton v. Winn Mgmt., TP 28,370 (RACD July 6, 2007), was issued by the Office of the Rent Administrator on July 6, 2007. The housing provider filed a timely notice of appeal on August 10, 2007. The Commission scheduled its appellate hearing for December 13, 2007. On December 6, 2007, the parties filed a Consent Motion on Continuance which was granted by Commission order on December 7, 2007. Winn Mgmt. v. Burton, TP 28,370 (RHC Dec. 7, 2007).

On January 7, 2008, counsel for the tenant/Appellee filed the instant Motion for Enlargement of Time to File Brief (Motion). The motion stated in part:

1. I did not meet the Appellee until over a month after the Appellant served the notice of appeal upon Appellee. Thus, I could not timely file an answer or responsive brief with the Commission within ten (10) days of service, in accordance with 14 DCMR §§ 3802.6 and 3802.8.
2. On December 5, 2007, upon learning that the Commission would hear the appeal on December 13, 2007 and prior to entering an appearance, I sought a continuance on behalf of the Appellee, in order to refer the case to the D.C. Bar

Pro Bono Program, and to allow the assigned pro bono attorney sufficient time to prepare for the hearing.

3. Upon receiving notice that the hearing was continued until January 24, 2008, I referred Appellee's case to the District of Columbia Bar for placement. However, the Bar was unable to place Appellee's case with a pro bono attorney, and the case was returned to Bread for the City Legal Clinic approximately a week later.
4. It was at this juncture that I first became aware of the brief filing deadlines, and, specifically, that the five (5) day time period for filing a supporting brief after the record is certified had expired pursuant to 14 DCMR § 3802.7.
5. Attorneys from Bread for the City's Legal Clinic have since worked diligently to draft a brief supporting the Appellee's position and responding to the numerous issues raised by the Appellant on appeal.
6. No prejudice to the Appellant will result from the Commission's acceptance of the attached brief because the Appellant will have the full ten (10) days to respond pursuant to 14 DCMR § 3802.8, and which date is before the hearing before the Commission.
7. I both faxed and mailed this Motion and the attached Brief to Counsel for the Appellant on January 7, 2008.
8. Given the favorable ruling in favor of the Appellee - 99% abatement, plus treble damages - it is in the interest of justice for Counsel for the Appellee to be able to fully present the arguments on the Appellee's behalf.
9. The instant request is for good cause, and that permitting the filing of the attached brief is in the interest of justice.
10. No prejudice to the Appellant will result from the Commission's acceptance of the attached brief because the Appellant will have the full ten (10) days to respond pursuant to 14 DCMR § 3802.8, and which date is before the hearing before the Commission.

Motion at 1-2.

THE COMMISSION'S ORDER

The Commission's rules provide: "Parties may file briefs in support of their position within five (5) days of receipt of notification that the record in the matter has been certified," 14 DCMR § 3802.7 (2004). "Parties may file responsive briefs within ten (10) days of service of the pleading to which the response is being filed," 14 DCMR §

3802.8 (2004). "There shall be no reply to a responsive brief and the Commission shall not accept the brief if submitted," 14 DCMR § 3802.9 (2004). In addition:

Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission.

14 DCMR § 3815.1 (2004). Motions shall set forth good cause for the relief requested. 14 DCMR § 3815.2 (2004).

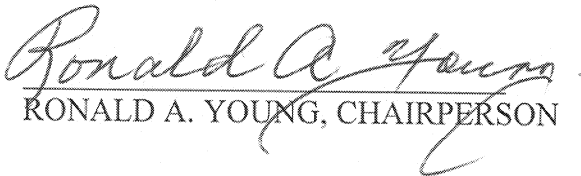
Metropolitan Baptist Church v. District of Columbia Dep't of Consumer and Regulatory Affairs, 718 A.2d 119 (D.C. 1998), states the factors for consideration for a continuance are: 1) the reasons for the continuance (or extension of time, as in this case), 2) the prejudice resulting from the denial, 3) the party's diligence in seeking relief, 4) any lack of good faith, 5) and prejudice to the opposing party, citing Daley v. United States, 739 A.2d 814 (D.C. 1999), cited in Redman v. Graham, TP 24,681 (RHC Jan. 6, 2003), Nezhadessivandi v. Ayers, TP 25,091 (RHC May 28, 2002).

In the instant case, the Commission concludes that counsel for the tenant, an attorney with Bread for the City Legal Clinic did not meet the tenant until after the notice of appeal was filed by the housing provider; that she attempted to find counsel for the tenant by applying to the D.C. Bar Pro Bono Program. After an unsuccessful attempt to find counsel for the tenant from the D.C. Bar. The case was returned to the Bread for the City Legal Clinic. When counsel for Bread for the City Legal Clinic became aware of the filing deadlines she acted diligently to prepare a brief and file the instant motion. Therefore, counsel was diligent in seeking an extension of time, the record does not indicate a lack of good faith. Additionally, the Commission concludes that allowing the

tenant to late file the brief will not delay or prejudice the housing provider in any manner.

Thus, this case is analogous to Nezhadessivandi v. Ayers, TP 25,091 (RHC May 28, 2002), in which this Commission held that pursuant to 14 DCMR § 3802.7 (2004)¹ the filing of a brief is subject to the Commission's discretion. Therefore, in conformity with the Commission's analysis in Nezhadessivandi, this Commission concludes that the motion to extend the time to file the brief is granted and the brief is accepted as filed.

SO ORDERED.

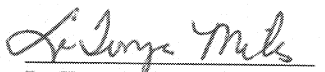

RONALD A. YOUNG, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the Order on MOTION FOR ENLARGEMENT TO FILE BRIEF OUT OF TIME in TP 28,370 was served by priority mail, with delivery confirmation, postage prepaid, this 18th day of January, 2008, to:

Margie Sollinger, *pro bono publico*
Bread for the City Legal Clinic
1640 Good Hope Road, S.E.
Washington, D.C. 20020

Phillip L. Felts, Esquire
Schuman & Felts, Chtd.
4804 Moorland Lane
Bethesda, MD 20814


LaTonya Miles
Contact Representative
(202) 442-8949

¹ The applicable regulation, 14 DCMR § 3802.7(2004) states, "parties may file briefs in support of their position [sic] within five (5) days of receipt of notification that the record in the matter has been certified." (emphasis added.)